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Werner Boltshauser

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EXAMINER

NGUYEN, JIMMY T

ART UNIT

PAPER NUMBER

3725

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/562,035	Applicant(s) BOLTSHAUSER, WERNER	
	Examiner JIMMY T. NGUYEN	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23,25-27,29-31 and 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23,25-27,29-31 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/28/08 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 05, 2008 has been entered.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 C.F.R. 1.75(d) and MPEP 608.01(o). Correction of the following is required:

“include face sides formed by front sides at edges on ends of the sections” (see claim 1, lines 7-8, and also see claims 4, 18, 21, 22, and 23, which have similar recitations).

“a marginal region of the can bottom is adapted to the shape of said restriction and a marginal face side of the bottom is formed by a front side of a marginal edge of the bottom, and for attaching the bottom to the can shell, the marginal face side of the bottom and the face side of the can shell at the bottom are on opposite sides of the can body, wherein one of the marginal face side of the bottom and the face side of the can shell at the bottom is inside of the can and the other one of the marginal face side of the bottom and the face side of the can shell at the bottom

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is outside of the can” (see claim 1, the last 7 lines, and also see claims 4, 18, 21, 22, and 23, which have similar recitations).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-23, 25-27, 29-31 and 33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 1, lines 7-8, the original specification does not provide support for the amended limitation, “the sections ... include face sides formed by front sides at edges on ends of the sections”. Although fig. 1 shows tube sections, but the original specification does not disclose which sides are the front sides as claimed. This is new matter.

Regarding claim 1, the last 7 lines, the original specification does not provide support for the amended limitation, “a *marginal face side of the bottom is formed by a front side of a marginal edge of the bottom... wherein one of the marginal face side of the bottom and the face side of the can shell at the bottom is inside of the can and the other one of the marginal face side of the bottom and the face side of the can shell at the bottom is outside of the can*”. Although fig. 1 shows a can bottom (31b), but the original specification does not disclose which side is the

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marginal face side of the bottom and a front side of a marginal edge of the bottom. Therefore, such specific languages are new matter.

Regarding claim 4, line 12, see similar discussion regarding the amended limitation, “front sides at edges on ends of the section” as set forth above in the rejection to claim 1, lines 7-8.

Regarding claim 4, the last 7 lines, see similar discussion in the rejection to claim 1, the last 7 lines, as set forth above.

Regarding claim 18, line 8, see similar discussion in the rejection to claim 1, lines 7-8 above regarding the amended limitation, “front sides of the edges”.

Regarding claim 18, the last 7 lines, see similar discussion in the rejection to claim 1, the last 7 lines, as set forth above.

Regarding claim 21, line 3, see similar discussion in the rejection to claim 1, lines 7-8 above regarding the amended limitation, “front sides at edges”.

Regarding claim 21, the last 7 lines, see similar discussion in the rejection to claim 1, the last 7 lines, as set forth above.

Regarding claim 22, line 2, see similar discussion in the rejection to claim 1, lines 7-8 above regarding the amended limitation, “front sides at edges”.

Regarding claim 22, lines 8-13, see similar discussion in the rejection to claim 1, the last 7 lines, as set forth above.

Regarding claim 23, line 2, see similar discussion in the rejection to claim 1, lines 7-8 above regarding the amended limitation, “front sides at edges”.

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Regarding claim 23, the last 7 lines, see similar discussion in the rejection to claim 1, the last 7 lines, as set forth above.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 22, line 8, there is no antecedent basis for the limitation, “the bottom” in the claim. Additionally, it is unclear of which element in the claim that the bottom belongs to since the closure member as claimed is the top of the can, not the bottom of the can.

Regarding claim 23, line 10, there is no antecedent basis for the limitation, “the bottom” in the claim. Additionally, it is unclear of which element in the claim that the bottom belongs to since the closure member as claimed is the top of the can, not the bottom of the can.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The following rejections are based on as best understood by the Examiner since the amended claims are unclear and they do not have support in the original disclosure as noted above.

Claims 1-4, 7-12, 14-15, 18-20, 27, 30-31 and 33, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3,337,944) in view of Büdenbender (hereinafter “Bud”) (US 5,186,592) and Saurin et al. (hereinafter “Saurin”) (US 4,315,132).

Regarding claims 1-3, 9-12, 14-15, 18, 20, 27-28, and 30-33, Morris discloses a device and a production of a can body comprising: forming metal strip (20) to a tube (fig. 1), welding a longitudinal seam in between lateral edges of the tube shaped metal strip (see character (40) in fig. 1), the longitudinal seam is welded on a flat pressed tube of the tube (fig. 1), the metal strip (20) is moved in its longitudinal direction through a forming device (38, 39) and is passed next to a welding device (40, 41), severing tube sections of the tube (at reference (50) in fig. 1), forming the sections into can shells (55) having a circular cylindrical cross-section (fig. 1). Morris does not disclose each of the can shells is forming with a cross sectional restriction and a bottom or top closure member is attached to the respective restriction by laser welding a circumferential seam. However, Bud disclose a can shell (1) is forming with a cross sectional shoulder-shaped restriction (5) at either faces of the shell (fig. 1) and a bottom or top closure member (3) (col. 3, lines 58-59) is attached to the respective restriction by laser welding (9), and an outer marginal region (fig. 1) of bottom or top closure member is adapted to the shape of the respective restriction (fig. 1), wherein the face side of the bottom or the top and the face side of the can shell at the bottom or the top are on

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opposite sides of the can body, one inside and one outside of the can (fig. 1). At a face side of the can shell, an annular buckle (5) is formed radially outwards (i.e. outward toward the inside of the can shell). A base covering (see portion (4')) is fixed in such a manner the connection (9) of the can shell to the can bottom is covered by it. Bud teaches the forming of the restriction is to reduce any crevice or residual space between the bottom closure member and the can shell for preventing corrosion and trapping residue (col. 3, lines 28-34).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form a cross section restriction at either faces of each of the can shells of Morris and to attach a bottom or top closure member to the restriction by laser welding as taught by Bud, in order to provide a bottom closure to the can shell and to reduce any crevice or residual space between the bottom closure member and the can shell for preventing corrosion and trapping residue. As to the longitudinal seam is welded by laser, the patent to Saurin teaches that it is old and well known in the can manufacturing art to weld a longitudinal seam of a tube (fig. 7) by laser (48). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to weld the lateral edges of the tube of Morris by a laser, as taught by Saurin, since such welding method is old and well known in the can manufacturing art, in order to form a tube. Note that the Applicant has not disclosed that welding by laser solves any stated problem or is for any particular purpose (see page 24, lines 4-7).

Regarding claim 4, Morris discloses cutting a metal strip into sections (fig. 5, see pre-cut lines on the metal strip), forming the sections into a closed flat pressed shape by means of

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forming mold and tools (figs. 8-10) with the sections in series (fig. 5), welding joining of the sections (at (40)), severing tube sections (50), and forming the sections to can shells (54).

Regarding claims 7, 8, and 19, Morris discloses the cutting procedure is carried out with cutting edge (figs. 17, 18), the cutting edge being moved together with the tube (fig. 17) and being reset after having severed a tube section (see up and down arrows on the cutting blade (78) in fig. 17). Incisions (24) are formed (fig. 17) and the cutting procedure being carried out in the flat regions between the incisions (fig. 17).

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3,337,944), Büdenbender (hereinafter “Bud”) (US 5,186,592), and Saurin et al. (hereinafter “Saurin”) (US 4,315,132), in further view of Cornelius (US 3,526,186).

Morris, as modified by Bud and Saurin, discloses the invention substantially as claimed as set forth above except for a film strip. However, the patent to Cornelius, in a can making art, discloses a film strip (13) is applied to a metal strip (10) in order to serve as an efficient aid in drawing of the metal strip (col. 2, lines 13-15). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the metal strip of Morris, with a film strip as taught by Cornelius, in order to provide an efficient aid in drawing of the metal strip.

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Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3,337,944), Büdenbender (hereinafter “Bud”) (US 5,186,592), and Saurin et al. (hereinafter “Saurin”) (US 4,315,132), in further view of Radtke (US 6,389,866).

Morris, as modified by Bud and Saurin, discloses the invention substantially as claimed as set forth above except for a valve on the upper closure member. However, the patent to Radtke, in a can forming art, teaches a valve (col. 2, line 33) is provided on an upper closure member (10) in order to form an aerosol can. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the upper closure member Morris, with a valve, as taught by Radtke, in order to form an aerosol can. As to the valve is being laser welded to the can shell, it would have been an obvious matter of design choice to weld by laser, since applicant has not disclosed that welding by laser solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the attaching method as disclosed by Radtke.

Claims 21, and 25-26, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Büdenbender (hereinafter “Bud”) (US 5,186,592) in view of Morris (US 3,337,944), and Saurin et al. (hereinafter “Saurin”) (US 4,315,132).

Bud discloses a can body with restrictions and upper and bottom closure members as claimed as set forth above. Bud discloses the can shell (1), but Bud does not expressly disclose how the can shell is formed. However, the patent to Morris, in a can forming art, can be applied to teach that it is old and well known to form a can shell by longitudinal seaming

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lateral edges of a metal strip by welding. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the can shell of Bud, by longitudinal seaming lateral edges of a metal strip by welding, as taught by Morris, since such process is old and well known in the can forming art for forming a can shell. As to the longitudinal seam is welded by laser, the patent to Saurin teaches that it is old and well known in the can manufacturing art to weld a longitudinal seam of a tube (fig. 7) by laser (48). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to weld the lateral edges of the tube of Bud by a laser, as taught by Saurin, since such welding method is old and well known in the can manufacturing art, in order to form a tube. Note that the Applicant has not disclosed that welding by laser solves any stated problem or is for any particular purpose (see page 24, lines 4-7).

Claims 22 and 23, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bündenbender (hereinafter “Bud”) (US 5,186,592), in further view of Radtke (US 6,389,866).

Bud discloses a can body with a restriction and an upper closure member as claimed as set forth above except for a valve. However, the patent to Radtke, in a can forming art, teaches a valve (col. 2, line 33) is provided on an upper closure member (10) in order to form an aerosol can. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the upper closure member Bud, with a valve, as taught by Radtke, in order to form an aerosol can.

Response to Arguments

In the applicant's remarks filed October 03, 2008, applicant argued that the body 1 of Budenbender (hereinafter "Bud") is a body of a drum, not a can. This argument has been considered. However, the claims do not specifically define the structure of the can, and the Examiner interprets the body 1 of Bud as the can body (i.e. a big can body) because it includes a cylindrical wall (1) and a bottom (fig. 1). Applicant further argued that the cover 5 is not a can shell, the Examiner agreed because the Examiner defined the body 1 of Bud is the can shell. Note that the reference number 5 in the Bud reference is not the cover.

Applicant argued that in figures 5 and 6 of Bud, a trough 16 in the drum body 1 is not at one face side of the can shell. This argument is confusing because there are no figures 5 and 6 nor the trough 16 in the Bud reference.

In general, applicant argued that the combination of references fails to disclose, for example, "one of the marginal face side of the bottom and the face side of the can shell at the bottom is inside of the can and the other one of the marginal face side of the bottom and the face side of the can shell at the bottom is outside of the can". This argument has been considered. However, such specific limitation does not have support in the original specification, which constitutes new matter.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JIMMY T. NGUYEN whose telephone number is (571)272-

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4520. The examiner can normally be reached on Monday-Thursday 7:30am-5:00pm with alternating Fri. 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dana Ross can be reached on (571) 272- 4480. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JTNguyen
December 3, 2008

/Jimmy T Nguyen/
Primary Examiner, Art Unit 3725

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